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14
15 **UNITED STATES DISTRICT COURT**
16 **DISTRICT OF NEVADA**

17 Cung Le, Nathan Quarry, Jon Fitch, Brandon
18 Vera, Luis Javier Vazquez, and Kyle
Kingsbury, on behalf of themselves and all
19 others similarly situated,

20 Plaintiffs,

21 v.

22 Zuffa, LLC, d/b/a Ultimate Fighting
23 Championship and UFC,

24 Defendant.

Case No. 2:15-cv-01045-RFB-BNW

DECLARATION OF RYAN R. SPARACINO

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I, RYAN R. SPARACINO, declare as follows:

1. I am the founder and Managing Partner of the law firm of Sparacino PLLC (“Sparacino” or “Firm”), and my Firm is counsel for certain former professional mixed martial arts (“MMA”) fighters who may have claims as absent members of a potential “Bout Class” in *Le v. Zuffa*, should a class be certified. I have personal knowledge of the facts set forth in this declaration and if necessary, could testify competently thereto. I make this declaration in support of Sparacino’s Opposition to Interim Class Counsel’s Emergency Motion and to transmit to the Court a true and correct copy of the attached documents.

I. Our Decision to Pursue this Litigation

2. I am the founder and Managing Partner of Sparacino and have been practicing law since 2004. Prior to starting Sparacino, I, among other things, worked at two prominent global law firms for about a decade (Winston & Strawn LLP and Pillsbury LLP), and I also served as the head of the D.C. office of an elite global investigations company, Nardello & Co. LLC.

3. The two other Sparacino lawyers working on this matter are Eli Kay-Oliphant and Stacy Taylor. Mr. Kay-Oliphant has been practicing law since 2005. Prior to joining Sparacino, Mr. Kay-Oliphant was a partner at the elite national litigation firm Massey & Gail LLP, and previously worked at global law firms Latham & Watkins LLP and O’Melveny & Myers LLP. Mr. Kay-Oliphant clerked for the Honorable W. Eugene Davis of the United States Court of Appeals for the Fifth Circuit. Ms. Taylor has been practicing law since 2001. Prior to joining Sparacino, Ms. Taylor served as a soldier and lawyer in the United States Army for twenty years.

4. Sparacino is a Washington, D.C.-based law firm, and its practicing attorneys are all licensed to practice in D.C. Sparacino represents plaintiffs and defendants in civil and criminal matters, with a particular emphasis on matters involving substantial investigations and large groups of plaintiffs who have suffered injury from a common scheme.

5. In its mass-tort cases, Sparacino typically partners with nationally prominent litigation firms under an arrangement in which Sparacino is responsible for the investigation- and

1 client-facing aspects of a matter, while the litigation partner firm takes the lead in court and on all
2 litigation-facing aspects of the matter.

3 6. I have never been sanctioned or disciplined by any court or bar, federal or state. To
4 my knowledge, no Sparacino lawyer has ever been sanctioned or disciplined by any court or bar,
5 federal or state.

6 7. I am a passionate life-long MMA fan, having first begun to closely follow the sport
7 in the late 1990s, and I have continued to follow it ever since. I feel passionately about helping
8 MMA athletes vindicate their legal rights.

9 8. I followed *Le v. Zuffa* since it was filed and, upon learning of the Court's
10 statements regarding potentially certifying a class, began investigating UFC's conduct to
11 determine if, in partnership with an antitrust specialist firm, Sparacino could provide valuable
12 counsel to fighters considering opting out of the class.

13 9. After this investigation, Sparacino determined that putative class members could
14 benefit from information and careful evaluation of whether it would be in each of their best
15 interests either to participate as a class member—depending both on the definition of the class as
16 well as their particular claim—or to opt out and file their own case.

17 10. Sparacino communicated with several prominent national antitrust specialist firms
18 before ultimately reaching an agreement to jointly represent potential opt-out clients with
19 Scott+Scott Attorneys at Law LLP ("Scott+Scott"), a national leader in antitrust litigation.

20 **II. Sparacino's Communications with Putative Class Members**

21 11. Sparacino identified potential clients by researching publicly available data
22 concerning UFC bout history. On March 16, 2021, Sparacino sent its "First Mailer" via Federal
23 Express to 223 potential clients identified through this process. Attached as Exhibit A is an
24 example of the cover letter to this First Mailer. This example reflects the mailer that Sparacino
25 sent to potential clients residing in California. Our intention was that the mailer comply with Rule
26 23 as well as the relevant rules concerning attorney solicitations. Further, even though Sparacino
27 is governed by the D.C. Rules of Professional Conduct, we prepared a separate mailer on a state-
28 by-state basis, out of an abundance of caution, to comply with each state's ethics rules.

1 12. We believe that there are approximately 1,200 former professional MMA athletes
2 who may have a potential opt-out claim that they may wish to pursue against UFC. Of that
3 broader set, 223 were sent the First Mailer by Sparacino. Sparacino has not yet actively contacted
4 any of the other approximately 1,000 additional potentially eligible putative class members who
5 may wish to receive counsel concerning whether to opt out, should a class be certified.

6 13. I have significant prior experience as an informal in-house ethics and privilege
7 point person at prior firms. I personally reviewed the relevant states' Rules of Professional
8 Conduct. And after preparing a template for communications to go out to putative class members,
9 I conducted an independent re-review to ensure such communications were not misleading. I also
10 established a process designed to ensure that we placed attorney-advertising language on every
11 envelope sent to prospective clients. I further personally verified that attorney-advertising
12 language appeared on the brochure and the caption of every mailer we sent.

13 14. Only after that review did Sparacino seek and receive Scott+Scott's review and
14 approval for the form of the First Mailers, which Scott+Scott provided after its own lawyers also
15 independently reviewed the First Mailers. Finally, Sparacino then further reviewed *Le v. Zuffa*
16 docket documents to attempt to determine in good faith any individuals who were represented and
17 excluded from the recipient list those individuals Sparacino identified.

18 15. Sparacino intended to refrain from sending communications to any person who was
19 individually represented, but Sparacino inadvertently, and without knowledge that they were
20 represented, sent mailers to four individuals who had been named plaintiffs in prior cases to *Le v.*
21 *Zuffa*: (1) Dennis Hallman, in Washington State; (2) Darren Uyenoyama, in California; (3) Gabe
22 Ruediger, in California; and (4) Mac Danzig, in Oregon. Our inadvertent mistake in mailing these
23 four fighters was the result of our reviewing the *Le v. Zuffa* docket (which we successfully used to
24 exclude all named plaintiffs in *Le*) while inadvertently failing to account for parties in related
25 cases whom, for reasons unknown to us, were not included as parties in the Class Action once it
26 was consolidated in *Le*.

27 16. The First Mailer presented to the recipient as one document, bound together by a
28 clip. The First Mailer included business cards for two Sparacino attorneys, a cover letter, and a

1 fourteen-page brochure. As mentioned above, an example of the cover letter template is attached
2 as Exhibit A. The brochure (which was functionally identical in every version of the mailer) is
3 attached as Exhibit B.

4 17. The First Mailer also included a brief overview of the potential claims against
5 UFC, biographies for the lawyers and non-lawyer professionals from Sparacino and Scott+Scott
6 who would work on the matter, and a lengthy disclaimer incorporating language that Sparacino
7 believed to be required by every state to which Sparacino sent the mailers.

8 18. The First Mailer did *not* (a) ask any potential client to grant opt-out authority to
9 Sparacino, (b) urge any action other than to reach out to Sparacino to discuss the potential client's
10 legal options, (c) provide a deadline by which potential clients would have to act or suggest that
11 time was of the essence, or (d) include any agreement, authorization, or other form for the
12 recipient to sign.

13 19. Sparacino has not communicated about this matter with—and has not sent any
14 mailers to—residents of Nevada. Sparacino intends to contact Nevada residents only if it is
15 permitted to do so by the Court.

16 20. Out of an abundance of caution, I mailed a copy of the First Mailer to the Nevada
17 Bar, via Federal Express, within fifteen days of sending the mailer.

18 **III. Interim Class Counsel Voiced Concerns About Our Mailers**

19 21. On March 23, 2021, Sparacino attended a conference call with Scott+Scott and
20 Interim Class Counsel (the “March 23 Conference Call”). Mr. Kay-Oliphant and I participated in
21 the March 23 Conference Call on behalf of Sparacino.

22 22. During the March 23 Conference Call, an attorney from Berger Montague, on
23 behalf of Interim Class Counsel, asserted the mailer was misleading because it did not (a) state
24 that the *Le v. Zuffa* Court had appointed Interim Class Counsel, (b) name the law firms that the
25 Court had so appointed, (c) disclose that Interim Class Counsel had been working on the *Le v.*
26 *Zuffa* case since before it was filed in 2014, and (d) explain that the Court previously indicated its
27 intention to certify the Bout Class and, if it does so, that the recipient of the mailer is part of that
28

1 class, the recipient's interests are currently represented by Interim Class Counsel, and the recipient
2 need not need take any action to benefit from any recovery in *Le v. Zuffa*.

3 23. During the March 23 Conference Call, Berger Montague, on behalf of Interim
4 Class Counsel, also asserted that it was improper for Sparacino to have contacted represented
5 parties. Berger Montague added that Sparacino had sent a mailer to at least one person directly
6 represented by Interim Class Counsel. And Berger Montague also stated that they believe they
7 represent every putative member of the class, even though the class has not been certified and the
8 opt-out date has not been set (much less expired).

9 24. During the March 23 Conference Call, I stated that Sparacino takes ethics issues
10 very seriously, we did not believe that we had done anything wrong, but we would promptly
11 review Berger Montague's allegations. I also stated that Sparacino and Scott+Scott currently
12 represent clients who are former professional MMA fighters and have retained us to provide
13 counsel regarding whether to opt out of *Le v. Zuffa*, should a class be certified.

14 25. During the March 23 Conference Call, David Scott, of Scott+Scott, stated that
15 Scott+Scott agreed with Sparacino about the need to take ethics concerns seriously, and
16 Scott+Scott also believed that Sparacino and Scott+Scott had not done anything wrong but
17 Scott+Scott, like Sparacino, would promptly review Berger Montague's allegations.

18 26. On March 24, 2021, Berger Montague, on behalf of Interim Class Counsel, emailed
19 Sparacino and Scott+Scott to provide additional detail regarding Interim Class Counsel's
20 assertions and allegations. The email purported to provide authorities and further detailed, in
21 relevant part, that Interim Class Counsel also believed the mailers were unethical because they
22 communicated a gratuitous sense of urgency and would lead a reasonable person to believe that
23 they needed to take action. A copy of the email is attached as Exhibit C.

24 **IV. Sparacino Addresses Interim Class Counsel's Concerns by Sending the Second**
25 **Mailer**

26 27. Sparacino disagreed with Interim Class Counsel's allegations that the mailers were
27 misleading. To be clear, Sparacino does not believe Interim Class Counsel's allegations are
28 meritorious or that it committed any ethics violations.

1 28. In an abundance of caution, however, and to alleviate Interim Class Counsel's
2 concerns, on March 24, 2021, Sparacino sent a follow-up letter (the "Second Mailer") to every
3 person that had received the First Mailer, other than those whom Sparacino had identified as
4 potentially represented (including the individuals discussed *supra*) and a few people for whom the
5 First Mailer had been returned due to an incorrect address. Attached as Exhibit D is the California
6 template used for the Second Mailer. Once again, the California template is substantively
7 identical to the versions sent to potential clients in other states.

8 29. All told, Sparacino sent 216 Second Mailers to a subset of the 223 people who
9 received the First Mailer. As of the date of this submission, Sparacino has not sent
10 communications to the approximately 1,000 other members of the putative Bout Class in *Le v.*
11 *Zuffa*.

12 30. As the Second Mailer states, Sparacino will not contact again any of the 216
13 recipients of the Second Mailer unless the recipient initiates contact with Sparacino. Even though
14 this language was not ethically necessary, I included it in the Second Mailer out of an attempt to
15 de-escalate the situation with Interim Class Counsel.

16 31. Based on standard Federal Express delivery times, the Second Mailers arrived on
17 March 25 and March 26, 2021, with most of the 216 recipients receiving them no later than late
18 morning March 26, 2021.

19 **V. Interim Class Counsel Threatens Scott+Scott and Scott+Scott Withdraws**

20 32. Sparacino, Scott+Scott, and Interim Class Counsel were scheduled to continue the
21 meet-and-confer process for late afternoon/early evening March 25, 2021. According to what
22 Scott+Scott told Sparacino, at some time before that scheduled conference call, Interim Class
23 Counsel threatened Scott+Scott to take adverse action directly against Scott+Scott if they did not
24 withdraw from this matter.

25 33. After being threatened by Berger Montague, Scott+Scott requested that the meet-
26 and-confer call scheduled for March 25 be delayed.

27 34. At around 2:00 PM ET on March 26, 2021, Scott+Scott informed Sparacino that
28 they intended to withdraw. That day, Scott+Scott partners, including Mr. Scott, told Mr. Kay-

1 Oliphant and me that Scott+Scott withdrew from its then-existing co-representation of
2 professional MMA fighters with Sparacino because of the reputational and business risk related to
3 Interim Class Counsel's threats against Scott+Scott. During the same discussion with Sparacino,
4 Scott+Scott reiterated that they believed neither Scott+Scott nor Sparacino had done anything
5 wrong, and Scott+Scott continued to believe that Berger Montague's allegations were without
6 merit.

7 35. Interim Class Counsel then filed the instant Motion without seeking to meet and
8 confer further (indeed, without communicating in any way) with Sparacino.

9 36. Unless affirmatively asked to do so by an MMA fighter, Sparacino will not send
10 mailers to any additional putative members of a potential Bout Class (i.e., the approximately 1,000
11 professional MMA athletes whom Sparacino has not yet contacted) until the Court resolves
12 Interim Class Counsel's Emergency Motion. While that Motion remains pending, Sparacino will
13 not communicate with any such absent class members unless they reach out to Sparacino directly.
14 Nor will Sparacino re-contact any of the individuals to whom we have already sent a mailer,
15 unless they initiate contact with us directly.

16 **VI. Sparacino's Client Relationships and Engagement Letters**

17 37. As of the date of this Declaration, Sparacino represents 11 former professional
18 MMA athletes ("Clients"), with 17 other former MMA athletes having requested an engagement
19 letter for review ("Contemplating Potential Clients").

20 38. Those Clients and Contemplating Potential Clients chose to hire, or are considering
21 hiring, Sparacino to help them understand their opt-out rights and how best to pursue their claims,
22 either as part of the presumptive class in *Le* or otherwise.

23 39. Sparacino has not sought permission to opt out on behalf of its clients—indeed, it
24 would be premature to do so considering that no class has been certified and no opt-out date has
25 been set.

26 40. Each Client or Contemplating Potential Client has executed an engagement letter,
27 or is currently in receipt of an engagement letter (the "Engagement Letter"), with Sparacino that
28 provides, in relevant part, as follows:

1 **Scope of Engagement.** We have agreed that our engagement is
 2 limited to performance of services in analyzing your potential ability to
 3 “opt-out” of the current class action against Zuffa, LLC, which does
 4 business as the Ultimate Fighting Championship or UFC (“UFC” or
 5 “Defendant”), relating to your ability to bring claims against UFC based
 6 upon UFC’s alleged violations of the Sherman Act. You understand that
 7 our engagement is limited to counseling you regarding the suitability of
 bringing an “opt-out” claim. In the unlikely event that the Firm is unable
 to identify enough potential “opt-out” clients to make the approach viable
 in the Firm’s discretion, the Firm may withdraw from the representation
 and/or recommend that you decline to “opt-out” of the current class action
 lawsuit against UFC, *Le v. Zuffa*. In this letter, we refer to our provision of
 legal services to you as described in this paragraph as the “UFC Case.”

8 **45-Day Special Withdrawal Period After Class Certification**
 9 **Order.** We expect the Court in *Le v. Zuffa* to enter an order under Rule 23
 10 of the Federal Rules of Civil Procedure that certifies the “Bout Class” in
 11 *Le v. Zuffa*, and that you will be eligible, as a member of the Bout Class.
 12 We want you to be confident in your choice of counsel and your decision
 13 to retain us to provide you counsel concerning potentially opting out in *Le*
v. Zuffa. To that end, we have agreed that you may terminate our
 representation of you in the UFC Case for any reason, or no reason at all,
 by notifying us within forty-five (45) days of the entry of any class
 certification order by the Court in *Le*, which we will promptly disclose to
 you.

14 Should you choose to terminate our services within this 45-day
 15 period, even if you do so to remain in the class action as a class member in
 16 *Le v. Zuffa* or hire other counsel to pursue your opt-out case, we agree that
 17 you will owe us nothing and that the Firm will fully release you from this
 Agreement, other than with respect to the provisions in this Agreement
 concerning “Confidentiality,” “Non-Disclosure,” and “Aggregate
 Representation and Conflicts,” which we believe are necessary to protect
 the legal strategy of the remaining clients whom the Firm represents in the
 UFC Case.

18 For the avoidance of all doubt, you can also terminate us at any
 19 time, for any reason; if you do so within 45 days of the entry of the class
 20 certification order under Rule 23, we will forego any claim to any share of
 21 your recovery. If you terminate us after 45 days of the entry of the class
 certification order under Rule 23, we will follow the terms outlined below
 in “Termination of Representation.”

22 **Notice Regarding Limited Nature of Representation in UFC**
 23 **Case.** As we have also explained in the Scope of Engagement section, you
 24 understand that we are representing you under this engagement letter for
 25 the narrow purpose of reviewing your potential claims under the Sherman
 26 Act, counseling you regarding whether to “opt out” of the current antitrust
 27 class action against UFC (*Le v. Zuffa*), and handling any of the immediate
 28 work thereafter (e.g., receiving a settlement offers from UFC, if any). We
 have disclosed to you that we are currently in discussions with several
 prominent national law firms that have expressed an interest in working on
 this matter and have relevant antitrust expertise, and we believe – but
 cannot promise – that we will partner with a law firm to handle this
 matter. You further understand that, because the decision of whether to
 “opt out” depends on the joinder of enough “opt out” plaintiffs so that the

1 economics are viable for all the “opt out” plaintiffs, and on our ability to
2 finalize a co-counsel relationship with a new firm after Scott+Scott’s
3 withdrawal from your matter, in the unlikely event that the Firm is unable
4 to represent a sufficient number of “opt out” plaintiffs to make the matter
5 economically viable, or we are unable to find a partner firm to
6 complement our work for you and provide antitrust expertise, the Firm
7 may elect to withdraw as your counsel in the UFC Case. In such
8 circumstances, we will do so within a reasonable time prior to any opt-out
9 deadline if such deadline is announced, and we will counsel you to remain
10 in the class action (*Le v. Zuffa*) rather than opting out. If we withdraw in
11 such circumstances, you will owe us nothing and we will not have any
12 claim to any recovery you receive as a class member in *Le v. Zuffa* or any
13 fees owed to any class counsel in *Le v. Zuffa*. While the Firm does not
14 believe it is likely that we will have to withdraw like this, we cannot
15 completely rule out the risk.

16 41. As reflected in the 45-day period quoted above, Sparacino intends to provide
17 Clients with a 45-day window once they have the information necessary to make an informed
18 decision regarding whether to remain in the class in *Le v. Zuffa* or to opt out and chart their own
19 legal course as part of a group of “opt-out” plaintiffs. To ensure there is no doubt as to our
20 intention for each Client to make a fully informed choice, however, Sparacino intends to modify
21 every Engagement Letter to extend the Client’s 45-day risk-free termination period to the end of
22 any court-ordered opt-out period, after the issuance of a court-approved class notice, so that any
23 client can elect to either remain a member of the class, or hire alternative opt-out counsel (i.e., not
24 Sparacino) if they wish to opt out but not use Sparacino.

25 42. Sparacino is currently in discussions with several elite antitrust litigation firms that
26 have expressed interest in partnering with Sparacino to counsel fighters considering opting out of
27 the class action in *Le v. Zuffa*. Our intention is to reach a co-counsel deal with a prominent
28 national law firm with antitrust and class action expertise comparable to Scott+Scott’s.

43. Sparacino’s counsel to its client about whether to opt out will depend heavily on
Sparacino’s antitrust litigation partner firm, that is: (i) Sparacino’s antitrust partner firm will be
the lead on the antitrust merits and class action/opt-out risk; and (ii) if Sparacino does not partner
with a high-caliber antitrust firm, Sparacino will counsel clients to remain in the class (or choose
other opt-out counsel if one should appear in a separate matter), and if that occurs Sparacino will
not seek any attorneys’ fees or costs from Clients or Interim Class Counsel.

1 I declare under penalty of perjury that the foregoing is true and correct.

2 

3 Dated: April 13, 2021

4 Ryan R. Sparacino

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April 2021 a true and correct copy of
DECLARATION OF RYAN R. SPARACINO was served via the District Court of Nevada's
ECF system to all counsel of record who have enrolled in this ECF system.

/s/ Brian D. Shapiro, Esq.

Brian D. Shapiro, Esq.